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IN THE

SUPREME COURT OF THE UNITED STATES

No. 42.

OCTOBER TERM, 1961.

(No. 687, October Term, 1960.)

PHIL CAMPBELL, Commissioner of Agriculture of the State of Georgia, and GEORGIA FARM BUREAU FEDERATION, INC., Intervenor,
Appellants,

vs.

WILLIAM HUSSEY, JR., AULBERT J. BRANNEN, SR., AULBERT J. BRANNEN, JR., ROBERT B. BRANNEN, GEORGE C. SUGG, ED WIGGINS, GUY SUTTON, SR., MRS. L. B. WILLOUGHBY,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, SWAINSBORO DIVISION.

BRIEF FOR THE APPELLEES.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, SWAINSBORO DIVISION.

BRIEF FOR THE APPELLEES.

OPINION BELOW.

The Opinion of the United States District Court for the Southern District of Georgia, Swainsboro Division (R. 153-164) is reported at 189 F. Supp. 54.

JURISDICTION.

The jurisdiction of this Court to review the decision of the United States District Court by direct appeal is conferred by 28 U.S.C.A. 1253. The Opinion of the District Court was entered on November 9, 1960 (R. 153-164). The Judgment of the District Court was entered on November 9, 1960 (R. 165-166). The Notice of Appeal of Georgia Farm Bureau Federation, Inc., was filed December 7, 1960 (R. 166-168). The Notice of Appeal of Phil Campbell, Commissioner of Agriculture of the State of Georgia, was filed December 8, 1960 (R. 168-169). This Court noted probable jurisdiction and transferred the case to the Summary Calendar on April 3, 1961 (R. 170).

STATUTES INVOLVED.

Federal Tobacco Inspection Act, 7 U.S.C.A., §§ 511-511 q, set forth in Appendix as Exhibit "A".

Georgia Tobacco Identification Act, Georgia Laws 1960, pages 214 to 227 inclusive (Ga. Code Ann., Ch. 111-2), set forth in Appendix as Exhibit "B".

QUESTIONS PRESENTED.

The questions presented in this brief and argument are:

(1) The auction sales of tobacco are a part of, in, and themselves constitute interstate commerce.

(2) Do the identification provisions of the 1960 Georgia Tobacco Inspection Act that are complained of impose a burden upon interstate commerce that is prohibited by the commerce clause of the Federal Constitution?

(3) Has Congress shown its intention that there shall be a scheme of federal regulations for the classification, grading and typing of tobacco so pervasive as to require the inference that, within this field, no room can be left for state action?

(4) May the appellees (plaintiffs below) raise the constitutional question?

SUMMARY OF ARGUMENT.

Practically all of the tobacco sold at Georgia warehouses is purchased for shipment in interstate commerce and the operation of the warehouses and the auctions are subject to the provisions of the Federal Tobacco Inspection Act, 7 U.S.C.A., §§ 511-511 q.

The Georgia Tobacco Identification Act, Georgia Laws 1960, pages 214 to 227, inclusive, imposes on operators of tobacco auction warehouses selling flue-cured leaf tobacco the duty of placing a white tag on each sheet of type 14 tobacco and colored tag on each sheet of tobacco other than type 14. The Georgia Act defines type 14 tobacco as flue-cured leaf tobacco grown in the traditional loose-leaf area of Georgia, Alabama and Florida and the said act unconstitutionally burdens interstate commerce in that the statute, by defining type 14 tobacco on the basis of geographic origin alone, permits Georgia grown tobacco to command a higher price than similar tobacco grown in South Carolina and North Carolina.

The Federal Tobacco Inspection Act was intended by Congress to provide a scheme of federal regulations for the classification, grading and typing of tobacco and is so pervasive as to require the inference that, within the field, no room was left for state action, and consequently the Georgia Act setting up a conflicting typing classification for

tobacco is invalid, and is not within the police power of the state.

The appellees (plaintiffs below) are the owners and operators of tobacco auction warehouses and they have the right to question the constitutionality of provisions of the Georgia Act for the typing and tagging of tobacco, when compliance with the provisions of the Georgia Act has resulted in financial losses to them.

ARGUMENT.

1. The Auction Sales of Tobacco Are a Part of, in, and Themselves Constitute Interstate Commerce.

It is conceded by the appellants in their brief and argument that under the decisions of this Court the sale of tobacco at auction involves interstate commerce. *Currin* v. *Wallace*, 306 U.S. 1, 59 S. Ct. 379, 83 L. Ed. 441; *Townsend* v. *Yeomans*, 301 U.S. 441, 57 S. Ct. 842, 81 L. Ed. 1210.

2. Do the Identification Provisions of the 1960 Georgia Identification Act That Are Complained of Impose a Burden upon Interstate Commerce That Is Prohibited by the Commerce Clause of the Federal Constitution?

The stated purpose of the Tobacco Inspection Act, 7 U.S.C.A., §§ 511-511 q is as follows:

> "That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other

characteristics affects the prices received therefor by producers; that without uniform standards of classification and inspections the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein." 7 U.S.C.A., § 511 a.

"The Secretary (of Agriculture) is authorized * * * to establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined. * * * and he may modify any standards established under authority of this Act." 7 U.S.C.A., § 511 b.

Congress having granted authority to the Secretary of Agriculture to fix standards for flue-cured tobacco the Secretary of Agriculture promulgated regulations to that effect.

Under the regulations of the Secretary of Agriculture "Type" is defined as:

"A division of a class of tobacco having certain common charactertistics and closely related grades. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths shall be treated as one type, *regardless of any factors of historical or geographical nature* which cannot be determined by an examination of the tobacco." 7 C.F.R., § 29.1096 (Emphasis added).

The "Grade" is defined as:

"A sub-division of a type according to group and quality, and according to color when it is of sufficient

importance to be treated as a separate factor." 7 C.F.R., § 29.1053.

Type 14 tobacco is defined as being:

> "That type of flue-cured tobacco commonly known as Southern Flue-cured or New Belt of Georgia, Florida and Alabama, produced principally in the southern section of Georgia and to some extent in Florida and Alabama." 7 C.F.R., § 29.1100.

Subsequent to the promulgation of the rules and regulations by the Secretary of Agriculture, as authorized under the Tobacco Inspection Act, the State of Georgia passed an Act on March 7, 1960, designated as Georgia Laws, 1960, pages 214-227, inclusive.

Section 1 of the Georgia Statute provides:

> "It is the intent and purpose of this Act to enable producers to have sufficient time to properly cure, prepare and have an adequate time to market their flue-cured tobacco in an orderly manner, and to provide a means of identification of types of flue-cured leaf tobacco sold in this state to the end that all producers thereof may be assured of the positive identification of the tobacco sold in this State. It is found by the General Assembly that it is essential that the provisions provided in this Act are necessary to the proper marketing and identification of flue-cured leaf tobacco. Type 14 flue-cured leaf tobacco as used herein shall mean that flue-cured leaf tobacco grown in the traditional loose-leaf area which consists of the State of Georgia, Florida and Alabama."

The Georgia Statute further provides:

> "Section 13 (A) as an aid in providing positive identification of type 14 flue-cured leaf tobacco, it shall be the duty of each licensee to furnish white identification tags to identify type 14 tobacco. It shall

be the duty of each licensee to cause such white identification tags to be placed upon each sheet of type 14 tobacco received in his warehouse for sale by requiring that producers, at the time of the receipt of tobacco in the warehouse submit *proof of the origin of the tobacco to be sold.* No licensee shall receive from any producer any tobacco for sale unless the licensee receives proof in the form of marketing cards, or other identification measures issued by the United States Department of Agriculture *so as to definitely establish the origin of the tobacco.* The licensee shall cause to be placed upon each sheet of type 14 tobacco, white sheet ticket that shall remain upon the sheet of tobacco at all times until after the sale of the tobacco and shall cause such ticket to have a carbon copy of the same color that shall remain with the sheet of tobacco at all times subsequent to sale, as well as prior to the sale, that the tobacco remains in this State." (Emphasis added).

"(B) Each licensee shall cause to be placed upon each sheet of other than type 14 tobacco received by him for sale, at the time of the receipt thereof, a colored identification tag of a color prescribed by the Commissioner that shall be attached to and shall remain in a conspicuous place at or near the top of the sheet of tobacco in such manner as to show to any person who desires to ascertain the type of tobacco offered for sale, or held for sale, that the tobacco is other than type 14. It shall be the duty of each licensee to ascertain at the time of the receipt of the tobacco to ascertain from producers or others *the origin of the tobacco* offered for receipt and to place the appropriate tag upon the tobacco so as to indicate the type." (Emphasis added).

"(C) Each licensee receiving tobacco from persons other than producers for sale *shall require that the origin of the tobacco be proven to his satisfaction so as to enable the licensee to properly identify the type of tobacco.*" (Emphasis added).

"(D) Any licensee who shall indicate or permit to be indicated upon his premises any tobacco as type 14 when, in fact, such tobacco is not type 14 or any licensee who shall violate the provisions of this section shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment of not less than one year nor more than five years and shall be subject to a fine of not more than $5,000.00 or both such fine and imprisonment."

"(E) It is the intent and purpose of this section to provide a means to positively identify type 14 tobacco and to require that types other than type 14 be identified and marketed in such manner as to indicate the type to any person seeking to ascertain the type of tobacco offered for sale in this State."

Pursuant to the requirements of the Georgia Act the defendant, Phil Campbell, as Commissioner of Agriculture of the State of Georgia, issued instructions and regulations requiring all warehousemen to place white identification tags on all tobacco sold in the State of Georgia whose origin was in the State of Georgia, Alabama or Florida. He caused blue identification tags to be placed on all tobacco offered for sale in the State of Georgia whose origin was outside of the territorial limits of the State of Georgia, Alabama or Florida.

The tobacco selling season commenced on July 28, 1960, and all that day and the next day all tobacco sold in the State of Georgia was positively identified as to its origin.

Chaos raged rampant. The tobacco buying companies refused to buy pile after pile of tobacco bearing blue identification to such an extent that the auction sale of tobacco was forced to be stopped at some of the warehouses.

The official graders of the United States Department of Agriculture graded all of the tobacco prior to its being

offered for sale. There was a great disparity in price for the identical grade of tobacco bearing white identification tags and the tobacco bearing blue identification tags. The price disparity for the identical grade of tobacco ranged as much as $18.00 per hundred pounds of tobacco. The tobacco growers in North Carolina and South Carolina virtually ceased shipping their tobacco to Georgia for sale.

After this suit was filed and Phil Campbell, Commissioner of Agriculture of the State of Georgia, was enjoined and restrained from the use of blue identification tags, designating the origin of the tobacco offered for sale, the tobacco market immediately stabilized. The price differential between identical grades of tobacco, regardless of the geographical origin of the tobacco, became minute and each pile of tobacco was sold on the basis of its own grade and other characteristics without the price being adversely affected because of its geographical origin.

We do not want to burden this Court with our interpretation of the evidence adduced in the trial of this before the three judge court; however, we would like to point out the fact that every witness for the appellants, upon question by the trial court, testified that the classification of type 14 tobacco was based on its origin in the State of Georgia, Alabama and Florida.

The stipulation of the parties and the undisputed evidence in the record unequivocally prove that the Georgia Act, in identifying tobacco as to type based solely upon the geographical origin of the tobacco, is the only cause of the disparity in price and the unreasonable burden on the free flow of interstate commerce.

In the opinion of the three judge trial court it was held as follows:

> "Both the purpose and effect of the Georgia enactment were to make a distinction at the markets, by

the color tags, between tobacco grown in Georgia and that grown elsewhere. The effect was to create a wide disparity of price between the two groups of tobacco, the Carolina growers receiving a much lower amount. This resulted in losses of business to the plaintiff warehousemen. The Georgia statute imposes upon the producers of tobacco in other (fol. 254) states who bring their products into that state for sale onerous burdens which it does not impose upon Georgia growers. This is a discrimination in favor of the citizens of Georgia against the citizens of other states. It is a discrimination against goods in commerce grown outside of Georgia in favor of like commodities produced in that state. These discriminations result in an injury not only to non-resident tobacco producers but to those engaged in the operation of the markets. The Federal Constitution forbids such discrimination as an unlawful interference with interstate commerce. *Shafer* v. *Farmers Grain Co.*, 268 U.S. 189, 45 S. Ct. 481, 69 L. Ed. 909; 11 Am. Jur. 96, Commerce, § 108. See *Best & Co.* v. *Maxwell*, 311 U.S. 454, 61 S. Ct. 334, 85 L. Ed. 275; *Brimmer* v. *Rebman*, 138 U.S. 78, 11 S. Ct. 213, 34 L. Ed. 862. The prohibition 'continues until the commodity has ceased to be subject of discriminating legislation by reason of its foreign character.' *Welton* v. *State of Missouri*, 1 Otto (91 U.S.) 275, 23 L. Ed. 347. Whether the discrimination is also a violation of the equal protection clause of the Constitution is a question which we need not decide. Cf. *Hartford Steam Boiler Inspection & Insurance Co.* v. *Harrison*, 301 U.S. 459, 57 S. Ct. 838, 81 L. Ed. 1223 (fol. 255)." (Record, pages 160-161).

We respectfully show that on appeal the testimony and inferences therefrom are viewed in the light most favorable to the prevailing party below, *Daniel* v. *U. S.*, C.A. 5th, 234 F.2d 102, certiorari denied 77 S. Ct. 362, 352 U.S. 971, 1 L. Ed. 2d 324. See also *U. S.* v. *U. S. Gypsum Co.*, 68 S. Ct. 525, 333 U.S. 364, 92 L. Ed. 746.

Appellants do not deny the adverse conditions existing on the tobacco market during the period of time that the Georgia Act was enforced and all tobacco offered for sale was identified as to its geographical origin. They seek to escape responsibility for the price discrimination and closing down of sales by saying that the only participation of the state was to identify type 14 tobacco and that any subsequent effect arose from the action of the tobacco buyers.

We say that this contention was answered by this Court in the case of *Near* v. *Minnesota*, 283 U.S. 697, 75 L. Ed. 1357, 51 S. Ct. 625, where it was held:

> "* * * it is enough to say that in passing upon Constitutional questions the court has regard to substance and not to mere matters of form, and that, in accordance with familiar principles, the statute must be tested by its operation and effect."

Further in the case of *Lockner* v. *New York*, 198 U.S. 45, 49 L. Ed. 937, 25 S. Ct. 539, this Court ruled:

> "The purpose of a statute must be determined from the natural and legal effect of the language employed. And whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation, and not from their proclaimed purpose. *Minnesota* v. *Barker*, 136 U.S. 313, 34 L. Ed. 455, 3 Inters. Com. Rep. 185, 10 Sup. Ct. Rep. 862; *Brimmer* v. *Rebman*, 138 U.S. 78, 34 L. Ed. 862, 3 Inters. Com. Rep. 485, 11 Sup. Ct. Rep. 213. The Court looks beyond the mere letter of the law in such cases. *Yick Wo* v. *Hopkins*, 118 U.S. 356, 30 L. Ed. 220, 6 Sup. Ct. Rep. 1064."

3. Has Congress Shown Its Intention That There Shall Be a Scheme of Federal Regulations for the Classification, Grading and Typing of Tobacco So Pervasive As to Require the Inference That Within This Field, No Room Can Be Left for State Action?

In answer to this question the Federal Act speaks for itself in that:

> "* * * without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; * * * constitute a burden upon commerce and make the use of uniform standards * * * imperative for the protection of producers and others engaged in commerce and the public interest therein." 7 U.S.C.A., § 511 a.

Congress authorized the Secretary of Agriculture upon investigation to:

> "* * * establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined, which standards shall be the official standards of the United States, * * * and he may modify any standards established under authority of this Act, whenever, in his judgment, such action is advisable." 7 U.S.C.A., § 511 b.

The Secretary of Agriculture has, by proper rules and regulations, carried out the statutory plan set forth by Congress.

Despite the fact that Congress, under the provisions of the Tobacco Inspection Act, manifested its intention to occupy the entire field in regulating the auction sales of flue-cured tobacco as a part of interstate commerce, the

State of Georgia seeks to usurp the constitutional powers of Congress and place its own regulatory power on the auction sales of tobacco.

> "When Congress acts in such a way as to manifest its purpose to exercise its constitutional authority, the regulating power of the State ceases to exist. After Congress acts on a matter within its exclusive jurisdiction, there is no division of the field of regulation." *Erie Railroad Company* v. *New York*, 233 U.S. 671, 58 L. Ed. 1149, 34 Sup. Ct. Rep. 756.
>
> "Power of Congress to regulate commerce is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than prescribed in the Constitution." *Kentucky Whip & Collar Co.* v. *Illinois Central Railroad Co.*, 299 U.S. 334, 81 L. Ed. 270, 57 Sup. Ct. Rep. 277.
>
> "The rule that a state may impose regulations under its police power which are valid, though effecting interstate commerce, at least until Congress takes possession of the field under its superior authority, does not apply where the state undertakes to regulate interstate commerce by imposing burdens on it." *Lemke* v. *Farmers Grain Co.*, 258 U.S. 50, 42 S. Ct. 244, 66 L. Ed. 458.
>
> "If a state statute unlawfully burdens interstate commerce, the reserved powers of the State under the Tenth Amendment will not save it." *Morgan* v. *Virginia*, 328 U.S. 373, 90 L. Ed. 1317, 66 Sup. Ct. Rep. 1050.
>
> "State statutes are unconstitutional, if they have an adverse effect on interstate commerce, though such matter is local in character." *Kansas City Southern Ry. Co.* v. *Daniel*, C.A. 5, 180 F.2d 910.
>
> "Congress under its power to regulate interstate commerce, may occupy the entire field or it may limit its regulations, and when it does occupy the entire

field, then regulation by a commission is void. Congress is not required to occupy the entire field, and until it does so occupy the entire field, the states have a large area over which they may exercise their power appropriate to their jurisdiction. This rule does not apply to interstate commerce demanding uniformity of regulations. With reference to that situation the state is without power because the Constitution itself occupies the field in that class of cases, even though there be no federal legislation." *Thompson v. McDonald*, C.C.A. 5, 95 F.2d 937, aff. 305 U.S. 263, 83 L. Ed. 164, 59 Sup. Ct. Rep. 176.

At the trial before the three judge court on August 16 and 17, 1960, evidence was introduced by the appellants to the effect that the Georgia markets were being flooded with untied flue-cured tobacco brought in from the Carolinas, and that unless such Carolina tobacco was identified as to its geographical origin, the tobacco industry in Georgia would be ruined. The defendants contend that for this reason it is to the interest of the Georgia tobacco farmers that the Act of the General Assembly of Georgia of 1960 should be enforced.

This argument is well answered in the case of *Lemke v. Farmers Grain Co.*, 258 U.S. 50, 42 S. Ct. 244, 66 L. Ed. 458, where the Court held as follows:

> "It is alleged that such legislation is in the interest of grain growers and essential to protect them from fraudulent purchases, and to secure payment to them of fair prices for the grain actually sold. This may be true, but Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed. The supposed inconveniences and wrongs are not to be redressed by sustaining the constitutionality of laws which clearly encroach upon the field of interstate commerce placed by the Constitution under federal control."

By a North Dakota Act, the State attempted to exercise control over all wheat buying within that state and in the case of *Shafer* v. *Farmers Grain Company*, 268 U.S. 189, 45 S. Ct. 481, 69 L. Ed. 909, the Supreme Court on pages 485-486 held as follows:

> "A state statute which by its necessary operation directly interferes with or burdens interstate commerce is a prohibited regulation and is invalid, regardless of the purpose with which it is enacted * * * Obviously, therefore, the control of this buying is of concern to the people of other states as well as those of North Dakota * * *."
>
> "The defendants make the contention that we should assume the existence of evils justifying the people of the state in adopting the act. The answer is that there can be no justification for the existence of a power that is not possessed. If the evils suggested are real, the power of correction does not rest with North Dakota but with Congress, where the Constitution intends that it shall be exercised with impartial regard for the interest of all the states that are effected."
>
> "The defendants further contend that the act is simply an attempt on the part of the state, through inspection regulations, to assist in carrying out the purpose of the United States Grains Standard Act. We think that the act discloses an attempt to do more * * *. Aside from the adoption of the grades established and promulgated under the federal act, we find little in the state act to support and much to refute the assertion that it is merely an attempt to carry out the purpose of the federal act."

In the case of *Stafford* v. *Wallace*, 258 U.S. 495, 66 L. Ed. 735, 42 S. Ct. 397, it was ruled:

> "2. It is for Congress to decide from its general information and from special evidence brought before

it, the nature of the evils, present or threatening, and to enact such legislation within its power as it deems necessary to remedy them, and this environment should be considered by the courts-in interpreting the scope and effect of the act in order to determine its validity."

The right of Congress to prescribe the conditions under which tobacco can be sold in interstate commerce was determined by this Court in the case of *Currin* v. *Wallace*, 95 F.2d 856, Aff. 306 U.S. 1, 83 L. Ed. 441, 59 S. Ct. 379, wherein it was ruled as follows:

"There is no permissible constitutional theory which would apply this principle to purchase of livestock as in the *Swift* and *Stafford* cases, and of grain as in the *Lemke* and *Shafer* cases, and deny its application to tobacco. In the *Lemke Case* (*supra*, 258 U.S. at pp. 60, 61, 66 L. Ed. 464, 465, 42 S. Ct. 244) condemning the effort of a State to control the buying of grain for shipment to other States, the Court referred to the power of Congress to provide its own regulations for such transactions, saying 'It is alleged that such legislation is in the interest of the grain growers, and essential to protect them from fraudulent purchases, and to secure payment to them of fair prices for the grain actually sold. This may be true, but Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed.' And again, in the *Shafer Case* (*supra*, 268 U.S. at pp. 198, 199, 69 L. Ed. 914, 915, 45 S. Ct. 481), the Court said: 'The right to buy it (grain) for shipment, and to ship it, in interstate commerce is not a privilege derived from state laws and which they may fetter with conditions, but is a common right, the regulation of which is committed to Congress and denied to the States by the commerce clause of the Constitution.' * * *Having this authority to regulate the sales of the tobacco market, Congress could prescribe the conditions under which the sales

should be made in order to give protection to seller or purchaser or both. Congress is not to be denied the exercise of its Constitutional authority in prescribing regulations merely because these may have the quality of police regulations. It is on that principle that misbranding under the Food and Drug Act embraces false or misleading statements as to the ingredients of commodities of the effects of their use. See *Seven Cases* v. *United States*, 239 U.S. 510, 60 L. Ed. 411, 36 S. Ct. 190, L.R.A. 1916D, 164. Inspection and the establishment of standards for commodities has been regarded from the colonial days as appropriate to the regulation of trade and the authority of the States to enact inspection laws is recognized by the Constitution. Art. 1, § 10, cl. 2. See *Turner* v. *Maryland*, 107 U.S. 38, 39, 51-54, 27 L. Ed. 370, 371, 375, 376, 2 S. Ct. 44; *Pacific States Box & Basket Co.* v. *White*, 296 U.S. 176, 181, 80 L. Ed. 138, 143, 56 S. Ct. 159, 101 A.L.R. 853. But the inspection laws of a State relating to exports or to articles purchased for shipment to other States are subject to the paramount regulatory power of Congress. See *Turner* v. *Maryland*, *supra* (107 U.S. at pp. 57, 58, 27 L. Ed. 377, 378, 2 S. Ct. 44). And Congress has long exercised this authority in enacting laws for inspections and the establishment of standards in relation to various commodities involved in transaction in interstate or foreign commerce. The fact that the inspection and grading of tobacco take place before the auction does not dissociate the former from the latter, but on the contrary it is obvious that the inspection and grading have immediate relation to the sales in interstate and foreign commerce which Congress thus undertakes to govern."

In the case of *Townsend* v. *Yeomans*, 301 U.S. 441, 57 Sup. Ct. Rep. 842, 81 L. Ed. 1210, the Court in speaking of Title 7, U.S.C.A., Section 511 *et seq.*, said as follows of Congress in enacting said legislation:

"It sought to aid tobacco growers by establishing and promoting the use of standards of classification

and by maintaining an official inspection service. It was found that the farmer had 'no definite system of grades of his own', that the private grading system used by the buyer was kept 'strictly confidential' so that 'without Government standards the farmer had no definite guide for sorting his tobacco', and that hence 'farmers generally are unable to class their tobacco correctly to meet the trade's demand'. To meet this need, the Act authorized the Secretary of Agriculture to make investigation and to establish standards for tobacco 'by which its type, grade, size, condition, or other characteristics' might be determined. (Section 3, (7 U.S.C.A., Section 511 b))."

In the case of *Mulford* v. *Smith*, 307 U.S. 38, 59 S. Ct. 648, 83 L. Ed. 1092, the Supreme Court was called upon to pass upon the constitutionality of the Agriculture Adjustment Act of 1938, 7 U.S.C.A., Sec. 1281 *et seq.* In holding that the Act was constitutional the Court said in part as follows:

"It purports to be solely a regulation of interstate commerce, which it reaches and affects at the throat where the tobacco enters the stream of commerce—the marketing warehouse. The record discloses that at least two-thirds of all flue-cured tobacco sold at auction warehouses is sold for immediate shipment to an interstate or foreign destination. In Georgia nearly one hundred percent of the tobacco so sold is purchased by extrastate purchasers. In markets where tobacco is sold to both interstate and intrastate purchasers it is not known, when the grower places his tobacco on the warehouse floor for sale, whether it is destined for interstate or intrastate commerce. Regulation to be effective, must, and therefore may constitutionally, apply to all sales. This Court has recently declared that sales of tobacco by growers through warehouseman to purchasers for removal outside of the state constitute interstate commerce. Any rule, such as that embodied in the Act, (Agricultural

> Adjustment Act of 1938) which is intended to foster, protect and conserve that commerce, or to prevent the flow of commerce from working harm to the people of the nation, is within the competence of Congress. Within these limits the exercise of the power, the grant being unlimited in its terms, may lawfully extend to absolute prohibition of such commerce, and a fortiori to limitation of the amount of a given commodity which may be transported in such commerce. The motive of Congress in exerting the power is irrelevant to the validity of the legislation."

Transactions involving the sale of tobacco at auction are effected with the public interest and are not matters of local concern. In the case of *Sligh* v. *Kirkwood*, 237 U.S. 52, 59 L. Ed. 835, 35 S. Ct. 501, this Court said:

> "That Congress has the exclusive power to regulate interstate commerce is beyond question, and when that authority is asserted by the State, even in the exercise of the police power, it may not interfere with the supreme authority of Congress over the subject; * * *"

In *The Minnesota Rate Cases*, 230 U.S. 352, 57 L. Ed. 1511, this Court held:

> "If a State enactment imposes a direct burden upon interstate commerce, it must fall regardless of federal legislation. The point of such an objection is not that Congress has acted, but that the State has directly restrained that which in the absence of Federal regulation should be free; * * * The power of Congress to regulate commerce among the several states is supreme and plenary. It is 'complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in the Constitution.' *Gibbons* v. *Ogden*, 9 Wheat 1, 196, 6 L. Ed. 23, 70. The conviction of its necessity sprang from the disastrous experiences under the Confederation, when the States vied in discriminatory

measures against each other. In order to end these evils, the grant in the Constitution conferred upon Congress an authority at all times to secure the freedom of interstate commerce, intercourse from state control, and to provide effective regulation of that intercourse as the National interest may demand * * * There is no room in our scheme of government for the assertion of State Power in hostility to the authorized exercise of Federal power. * * * It has been repeatedly been declared by this Court as to those subjects which require a general system or uniformity of regulation the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting State legislation." (Cases cited). * * *. The principle which determines this classification underlies the doctrine that the states cannot, under any guise, impose direct burdens upon interstate commerce. If this is but to hold that the States are not permitted directly to regulate or restrain that which, from its nature, should be under the control of the one authority, and be free from restriction, save it is governed in the manner that the National legislature constitutionally ordains."

In the case of *Milk Control Board of Pa.* v. *Eisenberg Farm Products*, 306 U.S. 346, 83 L. Ed. 752, this Court held:

"When people declared 'The Congress shall have Power * * *. To regulate Commerce * * * among the several States,' * * * their purpose was clear. The United States could not exist as a nation if each of them were to have the power to forbid imports from another state, to sanction the rights of citizens to transport their goods interstate, or to discriminate as between neighboring states in admitting articles produced therein. The grant of the power of regulation to the Congress necessarily implies the subordination

> of the states to that power. This Court has repeatedly declared that the grant established the immunity of interstate commerce from the control of the states respecting all those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulations must be prescribed by a single authority. But in matters requiring diversity of treatment according to the special requirements of local conditions, the states remain free to act within their respective jurisdictions until Congress sees fit to act in the exercise of its overriding authority. * * * None of the decisions on which the Court below and the respondent rely rules in the instant case. *Di Santo* v. *Pennsylvania*, 273 U.S. 34, 71 L. Ed. 524, 47 S. Ct. 267, involved a state law directed at foreign commerce; *Lemke* v. *Farmers Grain Co.*, 258 U.S. 50, 66 L. Ed. 458, 42 S. Ct. 244, condemned a State statute affecting commerce, over ninety percent of which was interstate, and essaying to regulate the price of commodities sold within the state payable and receivable in the state of destination; *Shafer* v. *Farmers Grain Co.*, 268 U.S. 189, 69 L. Ed. 909, 45 S. Ct. 481, also dealt with a state law intended to regulate commerce almost wholly interstate in character."

The appellants, in their brief and argument, contend that the Georgia Act makes an attempt to merely adopt the Federal definition as to the type of tobacco and require identification as to type. They state that the differences in the definitions are negligible and of no consequence with some minor changes in terminology, and that it is completely consistent with Section 3 of the Federal Act, by which the Secretary of Agriculture is authorized to establish standards by which its type, grade, size, etc., may be determined, and that the standards adopted by the Secretary of Agriculture shall be the official standards of the United States. We contend that

since Congress has authorized the Secretary of Agriculture to establish official standards of the United States for tobacco, that Congress has pre-empted the field, and the State of Georgia cannot act in any manner. In the case of *Rice* v. *Sante Fe Elevator Corp.*, 331 U.S. 218, 91 L. Ed. 1447, 67 S. Ct. 1146, the Court said as follows:

> "He could not be required by a State to do more or additional things or conform to added regulations, even though they in no way conflicted with what was demanded of him under the Federal Act. * * * The test, therefore, is whether the matter on which the State asserts the right to act is in any way regulated by the Federal Act. If it is, the Federal scheme prevails, though it is a more modest, less pervasive regulatory plan than that of the State. By that test each of the nine matters we have listed is beyond the reach of the Illinois Commission, since on each one Congress has disclosed its policy in the Warehouse Act. The provisions of Illinois law on those subjects must therefore give way by virtue of the Supremacy Clause. U. S. Const., Art. VI, cl. 2."

As one of the authorities the appellants cite to sustain their argument that Congress has not pre-empted the field so as to deprive the State of Georgia of the regulation of the auction sale of tobacco is the case of *Rice et al.* v. *Chicago Board of Trade*, 331 U.S. 247, 91 L. Ed. 1468, 67 S. Ct. 1160. We say that that case is not applicable to the case at bar in that the Court held:

> "* * * and § 4c provides that 'nothing in this section or § 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections.' * * * Thus the provisions in § 4c serves the function of preventing supersedure and preserving state control in two areas where state and federal law overlap."

There is nothing in the Federal Tobacco Inspection Act whereby Congress provided for the prevention of supersedure and preserving of state control in areas where state and federal law overlap.

That Congress has taken upon itself the right to control all phases of tobacco production is beyond dispute. The Secretary of Agriculture has been empowered by Congress to control the varieties of tobacco grown, so as to discourage the planting of the discount varieties; he controls the number of acres of tobacco planted; he designates tobacco auction markets; he has established 168 grades for tobacco which are the official standards of the United States; he has all tobacco graded by an official grader of the United States Department of Agriculture immediately prior to the sale; he designates the number of baskets of tobacco a set of tobacco buyers may buy each day and the number of days per week tobacco may be sold on the auction market. Further, Congress has, under the Stabilization Program, seen fit to guarantee the farmer ninety per cent of parity for his tobacco based upon the grade placed thereon by the official graders of the U. S. Department of Agriculture and should said tobacco, on the auction sale, bring less than the guaranteed government price, the tobacco is purchased under the stabilization program. On these facts, it can be readily seen that Congress has exercised its right and authority to control all phases of tobacco production from the planting of the seed until the final sale of the tobacco by the producer.

4. May the Appellees (Plaintiffs Below) Raise the Constitutional Question?

Complainants alleged in the original complaint and the evidence adduced at the trial proved that huge sums of money had been invested in the construction and equipping

of their tobacco auction warehouses, that the said warehouses were primarily designed and equipped for the auction sales of tobacco and unless they were operated for that purpose the buildings and equipment would become practically worthless, that they had expended large sums of money contacting growers to bring tobacco to their warehouses for sale, that they sold the growers' tobacco on a commission basis, that at least fifty per cent of the tobacco sold in their warehouses has its geographical origin outside of the State of Georgia, that as a result of the enforcement of the Georgia Tobacco Identification Act the tobacco growers in North Carolina and South Carolina could not sell their tobacco or suffered a disparity in price with the identical grade of Georgia tobacco of as much as $18.00 per hundred pounds, that the tobacco growers in the Carolinas had virtually ceased shipping their tobacco to complainants' warehouses as long as the Georgia Act was being enforced, that during the time the said act was enforced complainants had lost thousands of dollars in commissions that they would have received had the Carolina tobacco not been discriminated against and that complainants were in immediate danger of losing their occupation and investment as a result of the enforcement of the Georgia Tobacco Inspection Act.

In the opinion of the three judge trial Court (Record, Page 163), it was held as follows:

> "As has been noted the intervenor questions the right of the warehousemen to question the constitutionality of the Georgia statutory provision. We shall assume that the objection of the intervenor may properly be made. The Federal Courts have ever been reluctant to pass upon the validity of state statutes when attacked as violative of rights guaranteed by the United States Constitution. Only those who have been injured as the result of a denial of (fol. 258) those rights

can invoke Federal jurisdiction on constitutional questions. *Voeller* v. *Nielston Co.*, 311 U.S. 531, 61 S. Ct. 376, 85 L. Ed. 322. The provisions which the plaintiffs assail directly bear upon them in the operation of their businesses. It is upon them that the act imposes the duty of placing the tags, white or colored, upon the tobacco. It is clearly established that compliance with these provisions has resulted in financial losses to the plaintiffs as well as to the growers from other states who desired to market their tobacco at the plaintiffs' warehouses. This being so, the plaintiffs may bring and maintain the action. 11 Am. Jur. 748 et seq., Constitutional Law, § 111."

Premier-Pabst Sales Co. v. *Grosscup*, 298 U.S. 226, 80 L. Ed. 1155, 56 S. Ct. 754, holds:

"One who would strike down a state statute as obnoxious to the Federal Constitution must show that the alleged unconstitutional features injures him."

In the case of *Massachusetts* v. *Millan*, 262 U.S. 447, 43 S. Ct. 597, 601, 67 L. Ed. 1078, this Court ruled:

"The party who invokes the power must be able to show, not only that the statute is invalid, but that he has sustained or is in immediate danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

In the case of *Savage* v. *Jones*, 225 U.S. 501, 56 L. Ed. 1182, 32 S. Ct. 715, the Court on page 720, in passing on the right of complainants to raise constitutional questions, said as follows:

"In answer, it must again be said that 'commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business * * *' This was interstate commerce, in the freedom of which from any unconstitutional burden the com-

plainant had a direct interest * * * If the statute of Indiana, as applied to sales by importing purchases in the original package constitute an unwarrantable interference with interstate commerce in the complainant's products, he had standing to complain, and was entitled to relief against enforcement by the defendant of the illegal demands." See also *Tyler* v. *Registration Court Judges*, 179 U.S. 405, 45 L. Ed. 252, 21 S. Ct. 206; *Turpin* v. *Lemon*, 187 U.S. 51, 47 L. Ed. 70, 23 S. Ct. 20; *Heald* v. *District of Columbia*, 259 U.S. 114, 123, 66 L. Ed. 852, 42 S. Ct. 434.

It is respectfully submitted that the appellees (complainants below) are in a position to raise the constitutional question.

CONCLUSION.

Appellees respectfully show that based on the allegations in the complaint, the stipulation of the parties and the overwhelming weight of the evidence the judgment of the Court below was not only authorized but was, in fact, demanded and that the said judgment should be affirmed.

Respectfully submitted,

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EXHIBIT "A".

The Tobacco Inspection Act.

[Public—No. 314—74th Congress.]

[H. R. 8026.]

AN ACT

To establish and promote the use of standards of classification for tobacco, to provide and maintain an official tobacco inspection service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act—

(a) "Person" includes partnerships, associations, and corporations, as well as individuals.

(b) "Secretary" means the Secretary of Agriculture of the United States.

(c) "Inspector" means any person employed, licensed, or authorized by the Secretary to determine and certify the type, grade, condition, or other characteristics of tobacco.

(d) "Sampler" means any person employed, licensed, or authorized by the Secretary to select, tag and seal official samples of tobacco.

(e) "Weigher" means any person employed, licensed, or authorized by the Secretary to weigh and certify the weight of tobacco.

(f) "Tobacco" means tobacco in its unmanufactured form.

(g) "Auction market" means a market or place to which tobacco is delivered by the producers thereof, or their agents, for sale at auction through a warehouseman or commission merchant.

(h) Words in the singular form shall be deemed to import the plural form when necessary.

(i) "Commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purposes of this Act (but not in any wise limiting the foregoing definition) a transaction in respect to tobacco shall be considered to be in commerce if such tobacco is part of that current of commerce usual in the tobacco industry whereby tobacco or products manufactured therefrom are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Tobacco normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possessions of the United States, and foreign nations.

Sec. 2. That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction mar-

kets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein.

Sec. 3. That the Secretary is authorized to investigate the sorting, handling, conditioning, inspection, and marketing of tobacco from time to time, and to establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined, which standards shall be the official standards of the United States, and shall become effective immediately or upon a date specified by the Secretary: Provided, That the Secretary may issue tentative standards for tobacco prior to the establishment of official standards therefor, and he may modify any standards established under authority of this Act whenever, in his judgment, such action is advisable.

Sec. 4. That the Secretary is authorized to demonstrate the official standards; to prepare and distribute, upon request, samples, illustrations, or sets thereof; and to make reasonable charges therefor: Provided, That in no event

shall charges be in excess of the cost of said samples, illustrations, and services so rendered.

Sec. 5. That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: Provided, That, in the event com-

petent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. No fee or charge shall be imposed or collected for inspection or certification under this section at any designated auction market. Nothing contained in this Act shall be construed to prevent transactions in tobacco at markets not designated by the Secretary or at designated markets where the Secretary has suspended the requirement of inspection or to authorize the Secretary to close any market.

Sec. 6. That the Secretary, independently or in cooperation with other branches of the Government, State agencies, or persons, whether operating in one or more jurisdictions, is authorized to employ and/or license competent persons as samplers to take official samples of tobacco, or as weighers to weigh and certify the weight of tobacco, or as inspectors of tobacco to determine and certify, upon the request of the owner or other financially interested person, the type, grade, weight, condition, and/or such other facts as the Secretary may deem necessary.

The Secretary is authorized to fix and collect such fees or charges in the administration of this section as he may deem reasonable, and the moneys collected, except as provided in this section, shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts. Fees or charges collected under an agreement with a State, municipality, or person, or by an individual licensed to inspect or weigh or sample tobacco under this Act, may be disposed of in accordance with the terms of such agreement or license. Charges for expenses for travel and subsistence incurred by inspectors or weighers or samplers

employed by the Secretary when required to be paid by the applicant for service, may be credited to the appropriation, or any other funds authorized in this Act from which they were paid.

This section is intended merely to provide for the furnishing of services upon request of the owner or other person financially interested in tobacco to be sampled, inspected, or weighed and shall not be construed otherwise.

Sec. 7. That the Secretary shall provide for such reinspection or appeal inspection of tobacco as he may deem necessary for the confirmation or reversal of certificates issued under this Act. Each inspection certificate issued under this Act, unless invalidated or superseded in accordance with the regulations of the Secretary, shall be received in all courts and by all officers and employees of the United States as prima facie evidence of the truth of the statements therein contained.

Sec. 8. That warehousemen shall provide space on warehouse tickets or other tags or labels used by them for showing the grade of the lot covered thereby as determined by an authorized tobacco inspector under this Act. The Secretary may prescribe, by regulation, the form in which such certification of grade shall be shown, and may require that a copy of such warehouse ticket, tag, or label shall be furnished to the Secretary.

Sec. 9. That the Secretary is authorized to collect, publish, and distribute, by telegraph, mail, or otherwise without cost to the grower, timely information on the market supply and demand, location, disposition, quality, condition, and market prices for tobacco.

Sec. 10. It shall be unlawful—

(a) For any person to use the words "United States", "Government", or "Federal", or any abbreviation thereof, in, or in connection with, any statement relating to the grade of tobacco when such grade is not, in fact, one of the grades for tobacco according to the standards of the United States.

(b) For any person falsely to make, issue, alter, forge, or counterfeit, or aid, cause, procure, or assist in or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate, stamp, tag, seal, label, or other writing purporting to be issued or authorized under this Act.

(c) For any person, not an authorized inspector under this Act, to issue a certificate or report stating the type, grade, size, or condition of any lot of tobacco to be in accordance with the standards of the United States therefor which is of such color, size, arrangement, or wording as to be mistaken for a certificate issued under this Act, unless such certificate states in prominent letters in its heading that it is not issued under authority of the United States.

(d) For any person employed, designated, or licensed by the Secretary as an inspector, sampler, or weigher of tobacco under this Act knowingly to inspect, sample, or weigh improperly, or to issue any false certificate under this Act, or to accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty as an inspector, sampler, or weigher.

(e) For any person improperly to influence or to attempt improperly to influence or forcibly to assault, resist, impede, or interfere with any inspector, sampler, weigher,

or other person employed, designated, or licensed by the Secretary in the execution of his duties under this Act: Provided, however, That nothing herein shall operate to prevent the owner of tobacco from appealing or protesting, in accordance with regulations of the Secretary, the grade certified for his tobacco.

(f) For any person falsely to represent or otherwise indicate that he is authorized by the Secretary to inspect, sample, or weigh tobacco under this Act.

(g) For any person to substitute, or attempt to substitute, following inspection or sampling or weighing under this Act, other tobacco for tobacco actually inspected or sampled or weighed, or in the case of tobacco inspected in auction warehouses for any person not so authorized by the Secretary to remove any certificate of grade from any lot of tobacco prior to the sale of such lot.

(h) For any person falsely to represent that tobacco has been inspected, sampled, or weighed under this Act; or knowingly to have made any false representation concerning tobacco inspected under this Act; or knowing that tobacco is to be offered for inspection or sampling under this Act to load, pack, or arrange such tobacco in such manner as knowingly to conceal foreign matter or tobacco of inferior grade, quality, or condition; or for any person knowing that tobacco has been so loaded, packed or arranged, to offer it for inspection or sampling without disclosing such knowledge to the inspector or sampler before inspection or sampling.

(i) For any person willfully to alter an official sample of tobacco by removing or plucking leaves or otherwise, or for any person knowing that an official sample of tobacco has been so altered, thereafter to represent such sample as an official sample.

Sec. 11. The Secretary is authorized to publish the facts regarding any violation of this Act.

Sec. 12. That any person violating any provision of sections 5 and 10 of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000, or imprisoned not more than one year, or both.

Sec. 13. In construing and enforcing the provisions of this Act; the act, omission, or failure of any agent, officer, or other person acting for or employed by an association, partnership, corporation, or firm, within the scope of his employment or office, shall be deemed to be the act, omission, or failure of the association, partnership, corporation, or firm, as well as that of the person.

Sec. 14. The Secretary is authorized to make such rules and regulations and hold such hearings as he may deem necessary to effectuate the purposes of this chapter and may cooperate with any other Department or agency of the Government; any State, territory, district, or possession, or department, agency, or political subdivision thereof; purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations; or any person, whether operating in one or more jurisdictions in carrying on the work herein authorized; and he shall have the power to appoint, suspend, remove, and fix the compensation of all officers, employees, and licensees not in conflict with existing law. The Secretary is authorized to make such expenditures for rent outside of the District of Columbia, printing, binding, telegrams, telephones, books of reference, publications, furniture, stationery, office and laboratory equipment, travel, tobacco for use in preparing and demor. rating standards, and other supplies and expenses, including reporting services, as shall be necessary

to the administration of this chapter in the District of Columbia and elsewhere, and as may be appropriated for by Congress; and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for administering this chapter.

Sec. 15. That in carrying on the work herein authorized, the Secretary, or any officer or employee designated by him for such purpose, shall have power to hold hearings, administer oaths, sign and issue subpenas, examine witnesses, and require the production of books, records, accounts, memoranda, and papers. Upon refusal by any person to appear, testify, or produce books, records, accounts, memoranda and papers in response to a subpena, the proper United States district court shall have power to compel obedience thereto.

Sec. 16. That if any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

Sec. 17. That any duties devolving upon the Secretary of Agriculture by virtue of the provisions of this Act may with like force and effect be executed by such officer or officers, agent or agents, of the Department of Agriculture as the Secretary may designate for the purpose.

Sec. 18. That this Act may be cited as "The Tobacco Inspection Act."

Approved, August 23, 1935. As amended, October 28, 1949.

EXHIBIT "B".

Agriculture—Regulation of Sales of Flue-Cured Tobacco.

Code Chapter 111-2 Repealed.

No. 557 (House Bill No. 717).

An Act to regulate the sale of flue-cured leaf tobacco in this State so as to enable producers to have an adequate time to properly cure, prepare, and market flue-cured leaf tobacco; to provide a means of identifying all types of flue-cured leaf tobacco sold in this State and a procedure connected therewith, to provide for the licensing and bonding of operators of flue-cured leaf tobacco and a procedure connected therewith and a license fee; to provide for the bonding of operators of tobacco warehouses, the amount thereof, and the conditions of such bond; to provide the maximum charges and expenses of handling and selling leaf tobacco in this State; to provide that statements of charges shall be submitted by the warehouseman to the seller of tobacco; to provide for records to be kept by licensee to show the origin and amount of tobacco sold by him and a procedure connected therewith; to provide for the duties of the Commissioner of Agriculture in compiling statistics relative to the sale of leaf tobacco; to create an advisory board and to provide its composition, the duties of the members thereof and their compensation; to provide for the setting of the opening date of the tobacco marketing season in this State and to provide a procedure connected therewith; to provide a minimum tobacco marketing season in this State and a procedure for the ceasing of operations of a warehouse prior to the expiration of the maximum selling season; to provide the maximum rate of sales of leaf tobacco by warehousemen; to provide a means of identification of flue-cured leaf to-

bacco as to types sold in this State and a procedure connected therewith; to provide a penalty for violating the provisions of section 13 by a licensee; to provide for identification tags for use in marketing tobacco in this state; to prohibit the mixing of type 14 tobacco with any other type of tobacco and to prescribe a means for the sale of such mixed tobacco; to provide for the registration of purchasers of tobacco for resale and a procedure connected therewith; to provide for the duties of Commissioner of Agriculture in conjunction with the administration and enforcement of this Act; to provide for certification by weighers for the weighing of tobacco at each warehouse and a procedure connected therewith; to provide for the revocation or suspension of any license or registration issued thereunder after notice and hearing and a procedure connected therewith; to provide for injunctions and a procedure connected therewith; to provide for rules and regulations; to provide for judicial review of administrative determinations or decisions and a procedure connected therewith; to provide for appeals and a procedure connected therewith; to provide for the impounding of records and commodities during investigation for violations of this Act and rules and regulations promulgated hereunder; to repeal Code Chapter 111-2 relating to statistics on leaf tobacco; to repeal an Act approved March 28, 1935 (Ga. L. 1935, p. 376), fixing a maximum charge for selling and handling leaf tobacco; to repeal an Act approved March 9, 1955 (Ga. L. 1955, p. 589), relating to the sale of flue-cured leaf tobacco; to define terms; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Intent.

Section 1. It is the intent and purpose of this Act to enable producers to have sufficient time to properly cure, prepare and have an adequate time to market their flue-cured tobacco in an orderly manner and to provide a

means of identification of types of flue-cured leaf tobacco sold in this State to the end that all purchasers thereof may be assured of the positive identification of tobacco sold in this State. It is found by the General Assembly that it is essential that the provisions provided in this Act are necessary to the proper marketing and identification of flue-cured leaf tobacco. Type 14 flue-cured leaf tobacco as used herein shall mean that flue-cured leaf tobacco grown in the traditional loose-leaf area which consists of the State of Georgia, Florida, and Alabama.

Auction Licenses.

Section 2. No person real or corporate shall operate, hold or conduct an auction sale for the sale of flue-cured leaf tobacco within this State without having first obtained a license for the year in which the sale is made from the Commissioner. The license shall be for the calendar year and the license fee shall be $10.00 per each calendar year and shall expire on December 31 of each year and be subject to renewal under such rules and regulations as the Commissioner shall prescribe.

Same, Bonds.

Section 3. As a prerequisite to the issuance of a license under the provisions of this Act, each applicant shall produce evidence to the Commissioner that he has in force for the calendar year for which license is sought a bond issued by a corporate entity authorized to do business in this State in the penal sum of $10,000.00. Such information shall show that the bond is in full force and effect and shall remain of full force and effect during the calendar year for which the license is sought. The bond shall be conditioned upon the licensee performing

all the duties imposed upon him by law and the accounting for the proceeds of all flue-cured leaf tobacco received by him for sale and sold by him.

Charges by Auction Warehousemen.

Section 4. The maximum charges and expenses of handling and selling leaf tobacco by warehousemen licensed under this Act shall not exceed the following schedule, to-wit:

For auction fees, 15¢ on all piles or sheets of one hundred (100) pounds or less and twenty-five cents (25¢) on all piles or sheets over one hundred (100 pounds. For weighing and handling, ten cents (10¢) per pile or sheet for all piles or sheets of one hundred (100) pounds or less and ten cents (10¢) for each additional one hundred (100) pounds. For commissions on the gross sales of leaf toacco in said warehouses not to exceed two and one-half per cent (2½%) of said gross sales.

Same, Statements.

Section 5. The licensee of each and every warehouse shall render to each seller of tobacco of his warehouse an itemized statement plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the amounts charged for commission on each sale.

Warehouse Records, Reports, Etc.

Section 6. Each licensee shall keep a correct daily account of the number of pounds of leaf tobacco sold upon the floor of his warehouse. On or before Monday of each week, the licensee shall make a statement under oath of all of the tobacco sold upon the floor of his warehouse during the preceding week and shall transmit each

report to the Commissioner. The report shall be so arranged and classified as to show the number of pounds of tobacco sold for producers, the number of pounds sold for dealers, and the number of pounds resold by the licensee for his own account or for the account of some other warehouse or licensee. In addition thereto each licensee shall indicate the number of pounds of type 14 flue-cured leaf tobacco sold upon the floor of his warehouse for producers thereof and the number of pounds of type 14 flue-cured leaf tobacco sold by persons other than producers upon the floor of his warehouse. The licensee shall report the total number of pounds of other than type 14 flue-cured leaf tobacco sold for producers and persons other than producers. In addition thereto, each licensee shall make such additional reports as shall be prescribed by the Commissioner.

Records by Commissioner of Agriculture.

Section 7. The Commissioner shall cause to be kept and compiled the information submitted to him as to the sales of tobacco in this State. He shall cause such records to be kept in a manner so as to show the number of pounds of type 14 tobacco sold by each warehouse as well as the number of pounds of other than type 14 tobacco sold by each warehouse. He shall cause such records to be kept in a manner so as to show separately the number of pounds of type 14 tobacco and other types sold by producers and the number of pounds of each type of tobacco resold. The Commissioner of Agriculture is authorized to cause such information to be published in a manner that he deems most beneficial.

Advisory Board.

Section 8. To aid in the administration of this Act, there is hereby created an Advisory Board to be com-

posed of nine (9) members. Three (3) members are to be members of the House of Representatives to be appointed by the Speaker of the House, and two (2) members are to be members of the Senate to be appointed by the President of the Senate. The members of the General Assembly shall be appointed from those members who are tobacco producers or in the absence of such producers in the General Assembly such members may be appointed from the members of the General Assembly who represent the flue-cured leaf tobacco producing counties and districts of this State. One (1) member shall be the Commissioner of Agriculture, ex officio, or his representative, who shall be Chairman of the Board. One (1) member shall be a flue-cured leaf tobacco producer to be appointed by the Commissioner of Agriculture. One (1) member shall be the President of the Georgia Farm Bureau Federation, or his representative. One (1) member shall be a member of the Georgia Flue-Cured Tobacco Warehousemen's Association to be appointed by the President of that Association. The appointive members shall serve at the pleasure of the appointing officer. The members of the General Assembly shall receive the per diem and expense allowance provided for committee work of the General Assembly and such sums shall be paid from the funds appropriated for the operation of the General Assembly. The other appointive members of the Board shall be compensated in the amount of $15.00 per day for each day in attendance of the duties of the Board and shall be reimbursed for the necessary expenses incurred in the performance of their duties from the funds of the Department of Agriculture. The Commissioner shall be reimbursed for his expenses incurred in the performance of his duties. The members of the Board shall not receive the per diem provided herein for more than seven (7) days per year.

Same, Meetings, etc.

Section 9. The Board shall meet in June of each year, or upon call of the Chairman, to survey the condition of the tobacco crop and recommend an opening date of the marketing season. The Chairman shall determine the time and place of the meeting. The Board shall recommend to the Commissioner a date for the opening of the tobacco marketing season. If the Commissioner approves the opening date or if he deems it necessary for any other reason, he shall cause one or more members of the Board to attend the meeting of the Board of Governors of the Bright Belt Warehouse Association or its successors to make known the recommendation as to the opening of the marketing season in Georgia. If the Board of Governors of the Bright Belt Warehouse Association shall disapprove the recommended date or shall indicate an opening date for the tobacco marketing season in Georgia that is not in accordance with nor agreeable to the Tobacco Advisory Board or the Commissioner, the Commissioner shall determine the opening date of the tobacco marketing season in this State. If any licensee shall hold a sale prior to the date determined by the Commissioner, the license of the licensee shall stand revoked and shall not be reinstated or reissued in the calendar year of the revocation. The revocation provided herein shall be in addition to the other penalties provided for the violation of this Act. It is the intent and purpose of this section to provide a procedure for the fixing of the opening date of the tobacco marketing season and to place the final authority to fix said date in the Commissioner of Agriculture.

Marketing Season.

Section 10. The flue-cured leaf tobacco marketing season shall continue for a minimum of twenty-seven (27)

selling days after the opening date. The operating day of each flue-cured leaf tobacco warehouse shall not exceed five (5) actual selling hours and operating week of each such warehouse shall be limited to five (5) actual selling days, provided that no sale shall be held on Saturday or Sunday.

Same.

Section 11. If any warehouse has two (2) successive selling days during which the actual selling time is not more than one (1) hour each day, then that particular warehouse shall be permitted to cease its operations but not before two (2) days have passed after the days that the actual selling time has not exceeded one (1) hour per day. The Commissioner may authorize a warehouse to cease operations at an earlier date than that provided herein when the Commissioner determines that the ceasing of operations by the warehouse is in the best interest of the marketing of tobacco.

Maximum Sales.

Section 12. The maximum rate of sales at any such warehouse shall not exceed four hundred fifty (450) baskets during any one (1) hour nor shall the rate of sales during any one (1) day or week exceed four hundred and fifty (450) baskets per hour.

Tags for Type 14 Tobacco.

Section 13. (A) As an aid in providing positive identification of type 14 flue-cured leaf tobacco, it shall be the duty of each licensee to furnish white identification tags to identify type 14 tobacco. It shall be the duty of each licensee to cause such white identification tags to be placed upon each sheet of type 14 tobacco received

in his warehouse for sale by requiring that producers, at the time of the receipt of tobacco in the warehouse submit proof of the origin of the tobacco to be sold. No licensee shall receive from any producer any tobacco for sale unless the licensee receives proof in the form of marketing cards, or other identification measures issued by the United States Department of Agriculture so as to definitely establish the origin of the tobacco. The licensee shall cause to be place upon each sheet of type 14 tobacco a white sheet ticket that shall remain upon the sheet of tobacco at all times after receipt in the warehouse until after the sale of the sheet of tobacco and shall cause such ticket to have a carbon copy of the same color that shall remain with the sheet of tobacco at all times subsequent to sale, as well as prior to the sale. that the tobacco remains in this State.

(B) Each licensee shall cause to be placed upon each sheet of other than type 14 tobacco received by him for sale, at the time of the receipt thereof, a colored identification tag of a color prescribed by the Commissioner that shall be attached to and shall remain in a conspicuous place at or near the top of the sheet of tobacco in such manner as to show to any person who desires to ascertain the type of tobacco offered for sale, or held for sale, that the tobacco is other than type 14. It shall be the duty of each licensee to ascertain at the time of the receipt of the tobacco to ascertain from producers or others the origin of the tobacco offered for receipt and to place the appropriate tag upon the tobacco so as to indicate the type.

(C) Each licensee receiving tobacco from persons other than producers for sale shall require that the origin of the tobacco be proven to his satisfaction so as to enable the licensee to properly identify the type of tobacco.

(D) Any licensee who shall indicate or permit to be indicated upon his premises any tobacco as type 14 when, in fact, such tobacco is not type 14 or any licensee who shall violate the provisions of this section shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment of not less than one year nor more than five years and shall be subject to a fine of not more than $5,000.00 or both such fine and imprisonment.

(E) It is the intent and purpose of this section to provide a means to positively identify type 14 tobacco and to require that types other than type 14 be identified and marketed in such manner as to indicate the type to any person seeking to ascertain the type of tobacco offered for sale in this State.

Identification Tags.

Section 14. It shall be the duty of each licensee to provide identification tags of the color prescribed by the Commissioner for the use in marketing tobacco in his warehouse. Each licensee shall submit proof to the Commissioner prior to the opening of the marketing season, at a time prescribed by the Commissioner, of each year of an adequate supply of the identification tags required for the operation of his warehouse during the subsequent marketing season. Identification tags shall be of the size, color, number of carbon copies, shape and provide for information as shall be prescribed by the Commissioner.

Resales of Tobacco.

Section 15. Any person who shall purchase tobacco at auction for resale shall cause the tobacco so purchased to retain its identity as to type. Any person who shall mix type 14 tobacco with any other type of tobacco and who shall offer such mixed tobacco for sale shall cause

such tobacco to be marketed and identified as other than type 14 tobacco. It shall be the duty of each purchaser for resale to retain the original identification ticket of each sheet of tobacco so purchased or a copy thereof and submit such sheets to the warehouse as a means of identification when the tobacco is offered for resale.

Same, Licensing.

Section 16. It shall be unlawful for any person to purchase tobacco for resale without having first registered with the Commissioner of Agriculture. There shall be no fee for such registration and the Commissioner is authorized to revoke, suspend or cancel such registration after notice and hearing for any violation of this Act or any rule or registration promulgated hereunder.

Inspections.

Section 17. The Commissioner, himself or through his agent, is authorized to inspect the premises of each licensee as often as he shall deem necessary. It shall be the duty of each licensee to cause to be kept records that shall be open to inspection by the Commissioner in such manner as to accurately show the origin and disposition of each type of flue-cured leaf tobacco.

Certified Weighers.

Section 18. It shall be the duty of each licensee to provide a certified public weigher for the weighing of tobacco upon his premises and it shall be unlawful for any person to weigh tobacco for sale who is not a certified public weigher.

Enforcement of Act.

Section 19. It shall be the duty of the Commissioner to enforce the provisions of this Act and to utilize any

employee of the Department of Agriculture in the performance of his duties hereunder. The Commissioner is authorized to revoke or suspend any license or registration issued hereunder after notice and hearing before the Commissioner.

Injunctions.

Section 20. In addition to the remedies provided herein and notwithstanding the existence of any other remedy of law and notwithstanding the pendency of any criminal prosecution, the Commissioner is authorized to apply to the Superior Court and such Court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction or an ex parte restraining order restraining or enjoining any person from violating or continuing to violate any of the provisions of this Act or for the failure or refusal to comply with the provisions of this Act or any rule or regulation promulgated hereunder. Such injunction shall be issued without bond.

Rules.

Section 21. (a) Prior to adoption or change of any rules and regulations, the Commissioner shall promulgate the proposed promulgation or change and afford interested persons an opportunity to be heard and submit data and views orally or in writing.

(b) Any person with a real and substantial interest who is affected by a rule and regulation of the Commissioner who believes that the Commissioner in the promulgation or enforcement of such rule or regulation has exceeded the authority vested in him by the General Assembly under the Constitution of Georgia or United States shall have the right to petition the Commissioner for the repeal or rejection of such rule or regulation by

pointing out in what respect and for what reasons he contends the rule to be unlawful or unconstitutional. The Commissioner is required to consider every such petition and afford the petitioner an opportunity to be heard within thirty (30) days, and, after argument, the Commissioner shall determine the merits of the petition. If the Commissioner decides in whole or in part in favor of the petitioner, the Commissioner shall take corrective measures within thirty (30) days after the hearing to give the petitioner relief in every respect from any unlawful or unconstitutional rule or regulation. The foregoing is expressly made an administrative remedy and every person affected by any rule or regulation or any Act of the Commissioner is required to exhaust this remedy before taking any other steps.

(c) All hearings before the Commissioner shall be stenographically reported and shall be available to any interested party upon payment of the stenographic cost.

Review.

Section 22. **(a) Procedure.** (1) Any person aggrieved by a final decision or determination in any matter in which a hearing is required or authorized by this Act or by the State or Federal Constitution is entitled to judicial review thereof, provided that the judicial review herein afforded shall be exclusive judicial remedy for review of such decision or determination.

(2) Proceedings for review shall be instituted by filing a petition in the superior court of the county in which the Commissioner resides, within thirty (30) days after service of the final decision or determination of the Commissioner. Copies of the petition shall be served upon the Commissioner and all other parties of record. The

court in its discretion may permit other interested persons to intervene.

(3) The filing of the petition shall not stay enforcement of the Commissioner's decision; but the Commission may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty (30) days after service of the petition, or within such further time as the court may allow, the Commissioner shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding; the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Commissioner, the court may order that the additional evidence be taken before the Commissioner upon such conditions as the court may deem proper. The Commissioner may modify his findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modification or new findings or decision.

(b) Scope of review. (1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregulari-

ties in procedure before the Commissioner, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(2) The court may affirm the decision of the Commissioner or remand the case for further proceedings before the Commissioner; or it may reverse or modify the decision or compel action unlawfully withheld, if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions or decisions are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the Commissioner or affected by other error of law; or

(c) made upon unlawful procedure; or

(d) unsupported by substantial evidence as weighed in view of the entire record as submitted; or

(e) arbitrary or capricious.

(c) Appeals procedure. An aggrieved party may secure a review of any final judgment of the superior court under this Act by writ of error to the appropriate appellate court.

Suspension of Licenses.

Section 23. At such time as the Commissioner deems there has been a violation of this Act and the rules and regulations promulgated hereunder, he shall have the power and authority to suspend the license or registration pending investigation of such violation and until such time as the violation has been corrected to the satisfaction of the Commissioner. During the period of time of

any investigation of a violation, the Commissioner shall have the power and authority to impound all books and records and to preserve and maintain evidence until investigation is completed. Provided, however, that the investigation shall be completed at the earliest practicable time.

Code Chapter 111-2 Repealed.

Section 24. Code Chapter 111-2, relating to statistics on leaf tobacco is hereby repealed in its entirety.

1935 Act Repealed.

Section 25. An Act approved March 28, 1935 (Ga. L. 1935, p. 476), fixing a maximum charge for selling and handling leaf tobacco is hereby repealed in its entirety.

1955 Act Repealed.

Section 26. An Act approved March 9, 1955 (Ga. L. 1955, p. 589), relating to the sale of flue-cured leaf tobacco, is hereby repealed in its entirety.

Crimes.

Section 27. Any person who shall violate any provision of this Act for which no specific punishment is provided herein shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

Section 28. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved March 7, 1960.

No. 42.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

(No. 687, October Term, 1960.)

PHIL CAMPBELL, Commissioner of Agriculture of the State of Georgia, and GEORGIA FARM BUREAU FEDERATION, INC., Intervenor,
Appellants,

vs.

WILLIAM HUSSEY, JR., AULBERT J. BRANNEN, SR., AULBERT J. BRANNEN, JR., ROBERT B. BRANNEN, GEORGE C. SUGG, ED WIGGINS, GUY SUTTON, SR., MRS. L. B. WILLOUGHBY,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, SWAINSBORO DIVISION.

PROOF OF SERVICE.

Georgia, Emanuel County.

I, HOMER S. DURDEN, JR., of counsel for the Appellees herein, hereby certify that on the 26th day of September, 1961, I Served copies of the foregoing Brief for the Appellees on counsel for the Appellants by mailing

a copy in a duly addressed envelope with first class postage prepaid to their attorneys as follows:

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I further certify that I have in like manner served copies of the said brief and argument on the following, who are not Appellants, but are parties of interest:

ARCHIBALD COX, ESQ.,
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The General Counsel of the United States Department of Agriculture,
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